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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

JEREMY OLSEN,

Plaintiff,

v.

ALEX M. AZAR II, in his official
capacity as the Secretary of the United
States Department of Health and
Human Services,

Defendant.

No. 2:20-cv-00374-SMJ

PLAINTIFF'S STATEMENT OF
MATERIAL FACTS NOT IN
DISPUTE IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

**Noted: January 7, 2021
Without Oral Argument**

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. Without prior notice and comment, on January 12, 2017, the Secretary issued CMS Ruling 1682-R. ECF No. 2, Ex. 9 at 6 – 7.
2. There, the Secretary maintained that any CGM which did not completely replace finger sticks was precautionary and not covered. *Id.* The

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Secretary asserted that if the reading from a CGM sensor had to be confirmed with a fingerstick prior to making a treatment decision, the CGM was not "primarily and customarily used to serve a medical purpose." *Id.*

3. By its own terms, CMS 1682-R was effective as of the very date it issued – *i.e.*, January 12, 2017. *Id.* As described in the Council's decision, this is a "coverage policy for CGM's and ancillary equipment."
4. On March 14, 2019, Mr. Olsen received a favorable decision from ALJ Lambert in Appeal No. 1-8237389961 ordering coverage of Mr. Olsen's claims for CGM supplies. ECF No. 2, Ex. 5.
5. On May 7, 2019, CMS "referred" ALJ Lambert's decision to the Council on the grounds that ALJ Lambert erred by not addressing non-coverage of the CGM supplies as defined in CMS 1682-R and also erred by not applying CMS 1682-R. ECF No. 2, Ex. 6.
6. On July 23, 2019, the Council issued a decision (M-19-1748) reversing ALJ Lambert and denying Mr. Olsen's claims for CGM coverage on the grounds of non-compliance with CMS 1682-R. ECF No. 2, Ex. 7.

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1 Dated this 18th day of November 2020.

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5 By: s/ Casey M. Bruner

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November 2020,

1. I caused to be electronically filed the foregoing PLAINTIFF'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

James.Bickford@usdoj.gov

2. I hereby certify that I have caused to be mailed by United States Postal Service the foregoing document to the following non-CM/ECF participants at the addresses listed below:

Jeffrey Blumenfeld
Lowenstein Sandler LLP
2200 Pennsylvania Avenue, NW, Suite 500E
Washington, DC 20037

3. I hereby certify that I have mailed by United States Postal Service the foregoing document to the following CM/ECF participants at the address listed below: **None.**

4. I hereby certify that I have hand-delivered the foregoing document to the following participants at the addresses listed below: **None.**

s/ Casey M. Bruner

Casey M. Bruner, WSBA #50168

PLAINTIFF'S STATEMENT OF
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